

WILMERHALE

Alan E. Schoenfeld

April 26, 2019

+1 212 937 7294 (t)
+1 212 230 8888 (f)
alan.schoenfeld@wilmerhale.com

BY ECF

The Honorable Raymond J. Dearie
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Schwartz v. City of New York*, No. 1:19-cv-463

Dear Judge Dearie,

I write on behalf of Defendants in the above-mentioned case to seek leave to file the attached sur-reply in further opposition to Plaintiff's motion for a preliminary injunction (Dkt. 23).¹ Plaintiff consents to this request.

In connection with his reply brief in support of his application for a preliminary injunction (Dkt. 25), Plaintiff for the first time offered the declaration of Dr. Lawrence S. Mayer (Dkt. 25-1) and the declaration of Rabbi Dr. Tzvi Hersch Weinreb (Dkt. 25-2). Plaintiff now relies on these belated submissions to satisfy his burden in seeking a preliminary injunction. All the information he now seeks to marshal in support of his application, however, was available to him at the time he moved for a preliminary injunction. *See Burroughs v. County of Nassau*, 2014 WL 2587580, at *13 (E.D.N.Y. June 9, 2014) (noting impropriety of "submit[ting] on reply evidentiary information that was available to the moving party at the time that it filed its motion" (citation omitted)). Absent the opportunity to address these submissions, Defendants will be severely prejudiced in their defense of the City's conversion therapy statute. *See Wolters Kluwer Fin. Servs. Inc. v. Scivantage*, 2007 WL 1098714, at *1 (S.D.N.Y. Apr. 12, 2007); *see also Pagan v. Abbott Labs., Inc.*, 287 F.R.D. 139, 144 (E.D.N.Y. 2012) (finding that additional evidence filed with reply brief did not prejudice defendant because defendant was permitted to file sur-reply).

¹ Motions for leave to file a sur-reply "are subject to the sound discretion of the court." *Anghel v. N.Y. State Dep't of Health*, 947 F. Supp. 2d 284, 293 (E.D.N.Y. 2013) (citation omitted). Sur-replies are particularly appropriate when a reply brief includes new arguments or information. *See id.*

WILMERHALE

Hon. Raymond J. Dearie
April 26, 2019
Page 2

The attached sur-reply is short and to the point; it does not make new legal arguments or offer any new factual submissions. It is limited to responding to the testimony offered by Plaintiff's new declarants, which Defendants would have offered in their opposition brief had the declarations been submitted with Plaintiff's initial application. Defendants therefore request leave to file the attached sur-reply. Plaintiff consents to this request.

Respectfully submitted,

/s/ Alan Schoenfeld
Alan Schoenfeld

cc: All counsel via ECF